THE MINISTER OF WELFARE (SHRI SITARAM KESRI)

S. No.	Name of the State/UT Wakf Board	Income	Expenditure
(1)	(2)	(3)	(4)
1.	Assam	Rs. 1,07,972.00	Rs. 98,082.00
2.	Gujarat (Kutch)	Rs 2,38,790.00	Rs. 2,39,384.00
3.	Kerala	Rs. 2473,907.00	Rs. 24,27,995.00
4.	Maharashtra	Rs. 11,12,000.00	Rs. 10,58,000.00
5.	Meghalaya	Rs 84,631.84	Rs. 72,729.20
6.	Punjab Wakf Board (Punjab, Haryana Himachal Pradesh & UT of Chandigarh)	Rs. 3,04,13,297.47	Rs. 2,55,15,626.00
7.	Tamil Nadu	Rs. 35,90,000.00	Rs. 47,67,800.00
8.	Tripura	Rs. 12,67,000.00	Rs. 12,67,000.00
9.	Uttar Pradesh (Sunni)	Rs. 15,17,900.00	Rs. 29,95'000.00
10.	Uttar Pradesh (Shia)	Rs. 8,27,730.00	Rs. 8,12,921.00
10.	West Bengal	Rs. 50,63,083.37	Rs. 51,09,417.00
11.	Andaman & Nicobar Islands	Rs. 4,53,000.00	Rs. 4,53,00.00
12.	Delhi	Rs. 62,79,500.00	Rs. 69 23,500
13.	Lakshadweep	Rs. 3,95,063.00	3,50,227.00
14.	Pondicherry	Rs. 2,122.00	Rs. 5,732.00
15.	Jammu & Kashmir	Wakf Act 1954 is not extended to this State.	

Supreme Court Judgement regarding job reservation in respect of SC/ST and backward classes

@3255. SHRI SATISH PRADHAN : Will the Minister of WELFARE be pleased to state :

(a) whether Government has received a Supreme Court judgement on job reserva tion/promotion quota for SC/ST and other backward communities;

(b) if so, what are the details thereof;

(c) whether Government has taken final decision to implement the Supreme Court order in letter and spirit; and

(d) if so, what is the present status of implementation of the order on both job reservation and promotions ?

THE MINISTER OF WELFARE (SHRI SITARAM KESRI) : (a) Government has received the judgement of 9-judge Bench of the Supreme Court in Indira Sawhney and others vs. Union of India and otherp arising of the office memoranda dated 13-8-90 and 25-9-91 providing for reservation in civil services and posts under the Government of India in favour of socially and educationally backward classes and other economically backward sections who are not covered by any existing scheme of reserva-I tion.

J (b) Relevant extract from the judgement containing the majority views of the Supreme Court is appended as statement *(.See* below).

(c) Yes, Sir.

(d) The Supreme Court has held the office memorandum of 13-8-90 as valid and enforceable subject to the exclusion of the socially advanced members/sections ('creamy layer') from the other backward classes. Government had constituted an Expert Committee under the Chairmanship of Justice (Retd.) Ram Nandan Prasad to make recommendations on the criteria to be adopted by the government in this regard. The committee has since submitted its report, which also stands accepted by Government.

The OM of 13-8-90 as well as the sub-sequent OM of 25-9-91 did not contemplate reservation in promotions in favour of other backward classes.

The Supreme Court hasi held that reser-vation of appointments or posts under article 16(4) is confined to initial appointment

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only and cannot extend to providing reservation in the matter of promotion. It has also observed that wherever reservation are already provided in the matter of promotion, such reservation may continue in operation for a period of 5 years from the date of judgement.

Statement

The Supreme Court in their majority judgement delivered on 16-ll-d92 summarised their answers to various Questions dealt by them as under :

(1) (a) It is not necessary that the 'provision' under Articles 16(4) should necssariiy be made by the Parliament/ Legislature. Such a provision can be made by the Executive also. Local bodies, Statutory corporations and other instrumentalities of the State falling under Article 12 of the Constitution are themselves competent to make such a provision, if so advised.

(b) An executive order making a provision under Article 16(4) is enforceable the moment it is made and issued.

2(a) Clause (4) of article 16 is not an eception to clause (1). It is an instance and an illustration of the classification inherent in clause (1).

(b) Aiticle 16(4) is exhaustive of the subject of reservation in favour of backward class of citizens, as explained on this judgement.

(c) Reservations can also be provided under clause (1) of Article 16. It is not confined to extending of preferences, concessions or exemptions alone. These reservations, if any, made under clause (1) have *to be so* adjusted and implemented as not to exceed the level Of representation prescribed for backward class of citizens—as explained in this judgement.

(3) (a) A caste can be and quite often is a social class in India. If it is hack-ward socially, it would be a backward class for the purposes of Article 16(4). Among non-Hindus, there are several occupation groups, sects and denominations, which for historical reasons, are socially backward. They too represent backward social collectives for the purposes of Article 16(4). 13-1SORSS/94

<b) Neither the Constitution nor the law prescribes the procedure or method of identification of backward class. Nor is it possible or advisable for the court to lay down any such procedure or method. It must be left to the authority appointed to identify. It can adopt such method/procedure as it thinks convenient and so long as its survey covers the entire populace, no objection can be taken to it. Identification of the backward classes can certainly be done with reference to castes among and alongwith other occupational groups, classes and sections of people. Ons can start the process either with the occupational groups or with castes or with some other groups. Thus one can start the process with the castes, wherever they are found, apply the criteria (evolved for determining backwardness) and find out whether it satisfies the criteria.

If it does—what emerges is a 'backward class of citizens" within the meaning of and for the purposes of Article 16(4). Similar process can be adopted in the case of other occupational groups, communities and classes, so as to cover the entire populace. The central idea and overall objective should be to consider all available groups. sections and classes in society. Since caste represents an existing, identifiable social group/class encompassing an overwhelming majority of the country's population, one can well begin with it and then go to other groups, sections and classes.

(c) It is not necessary for a class to be designated as a backward class that it *is* situated similarly to the Scheduled Castes/ Scheduled Tribes.

(d) 'Creamy layer' can be, and must be excluded.

(e) It is not correct to say that the backward class of citizens contemplated in Article 16(4) is the same as the socially arid educationally backward classes referred to in Article 15(4). It is much wider. The accent in article 16(4) is on social backwardness. Of course, social, educational and economic backwardness arc closely inter-twined in the Indian context.

(f) The adequacy of representation of a particular class in the services under the State is a matter within the subjective satisfaction of the appropriate Government.

The judicial scrutiny in that behalf is the same as in other matters within the subjective satis/action of an authority.

(4) (a) A backward class of citizens cannot be identified only and exclusively with reference to economic criteria.

(b) It is, of course, permissible for the Government or other authority to identify a backward class of citizens on the basis of occupation-cum-income, without reference to caste, if it is so advised.

(5) There is no constitutional bar to classify the backward classes of citizens into backward and more backward categories.

(6) (a) & (b) The reservations contemplated in Clause (4) of Article 16 should not exceed 50%. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mam-stream of national life and in view of the conditions peculiar to and characteristic of them need: to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.

(c) The rule of 50% should be applied to each year. It cannot be related to the total strength of the class, category, service or cadre, as the case may be.

(d) Devadasan was wrongly decided and is accordingly over-ruled to the extent it is inconsistent with this judgement.

(7) Article 16(4) does not permit provi sion for reservations in the matter of pro motion. Tin's rule shall, however, have only prospective operation and shall not affect the promotions already made, whether made on regular basis or on any other basis. We direct that our decision on this ques tion shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regu lar-permanent basis. It is further directed that wherever reservations are already pro vided in the matter of promotion—be it Central Kcrviccs or State Services, or for that matter services, under any Corporation, authority or body falling under the definition of 'State' in Article 12—Such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of Article 16(4). If any authority thinks that for ensuring adequate representaion of 'backward class of citizens' in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it do so. (Ahmadi, J. expresses no opinion on this question upholding the preliminary objection of Union of India). It would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without comprising the efficiency of the administration.

(8) While the rule of reservation cannot be called antimeritian, there are certain services and posts to which it may not be advisable to apply the rule of reservation.

(9) The distinction made in the impugned Office Memorandum dated 25lh Sep-iermber, 1991 between 'poorer sections' and others among the backward classes is not invalid, if the classification is understood and operated as based upon relative backwardness among the seveial classes identified as other Backward classes, as explained in para 114 of this Judgement.

(10) The reservation of 10% of the posts in favour of 'other economically backward sections of the people who are not covered by any of the existing schemes of the reservation' made in the impugned office memorandum dated 25-9-1991 is constitutionally invalid and is accordingly struck down.

(11) There is no particular or special standard of judicial scrutiny applicable to matters arising under Article 16(4).

(12) The Government of India and the State Governments have the power to, and ought to, create a permanent mechanism— in the nature of a Commission—for examining requests of inclusion and complains of over-inclusion or non-inclusion in the list of O. B.Cs. and to advise the Government, which advice shall ordinarily be binding upon the Government. Where, however, the Government doe,s not accept the advice it must record its reasons there-Sore,

(13) In view of the answers given by us herein and the directions issued herewith, it is not necessary to express any opinion on the correctness and adequacy of the exercise done by the Mandal Commission. It is equa'ly unnecessary to send the matters back to the Constitution Bench of Five Jtfdges.

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राज्य सरकारों द्वारा अनुसूचित जातियों/अनुसूचित जनजातियों हेतु निर्धारित धनराशि का अन्तरित किया जाना

@@3256. डा. जितेन्द्र कुमार जेन : श्री राम जेठमलानी :

क्या कल्याण मंत्री यह बताने की कृपा करेंगे कि :

(क) क्या सरकार का ध्यान दिनांक 2 जनवरी, 1993 के "पायनियर" में "प्रिवेल्स डाइवरशन आफ एस. सी./एस. टी. फन्डस बाय स्टेट गवर्नमेन्टस" शीर्षक के अंतर्गत प्रकाशित समाचार की ओर दिलाया गया है;

(ख) यदि हां, तो क्या "अनुसूचित जातियों और अनुसूचित जनजातियों हेतु कल्याण निधि" के लिए सरकारी सहायता को राज्य सरकारों द्वारा अंतरित किए जाने के मामले सरकार के ध्यान में आए हैं;

(ग) यदि हां, तो क्या आन्ध्र प्रदेश, दिल्ली प्रशासन, असम, महाराष्ट्र, गुजरात और पश्चिमी बंगाल में ऐसी अनियमितताओं के मामले भी सरकार के ध्यान में आए हैं;

(घ) यदि हां, तो इस संबंध में ब्यौरा क्या है;

(ङ) क्या सरकार ने ऐसे मामलों की जांच कर तथ्यों का पता लगाया है; और

(च) यदि हां, तो तथ्यों का ब्यौरा क्या है और सरकार ने भविष्य में इस कल्याण निधि का दुर्विनियोग रोकने के लिए क्या कदम उठाए हैं ?

कल्याण मंत्री (श्री सीताराम केसरी) : (क) जी, हां ।

(ख) से (च) तथ्यों का पता लगाने के लिए इस मामले को राज्य सरकारों के साथ उठाया गया है । राज्य सरकारों से तथ्य प्राप्त होने के बाद इस संबंध में उपयुक्त कार्रवाई की जाएगी ।

दिल्ली में बालवाड़ियां

3257. श्री सर्वजीत राठवा : क्या कल्याण मंत्री यह बताने की कृपा करेंगे कि :

(क) क्या दिल्ली में कामकाजी महिलाओं को सुविधा के लिए उनके कार्य करने के स्थानों के समीप बालवाड़ियां खोली गई हैं;

(ख) यदि हां, तो उनका ब्यौरा क्या है और ये बालवाड़ियां दिल्ली में कहां-कहां स्थित हैं; और

(ग) क्या सरकार दिल्ली में और बालवाड़ियां खोलने का विचार रखती है ?

कल्याण मंत्री (श्री सीताराम केसरी) : (क) जी, हां ।

(ख) एक विवरण अनुपत्र के रूप में संलग्न है । [हिन्दी परिशिष्ट 166, अनुपत्र सं. 59]

(ग) जी, हां ।

Settlement of reimbursement claims

@ 3257-A SHRI B. K. HARIPRASAD : Will the Minister Of AGRICULTURE be pleased to state :

(a) whether the Central Government had accorded approval for implementation of two watershed projects in the districts of Tumkar and Bangalore for a period of five

@Previeusly Unstarred Question 2553 transfered from 16th March, 1993.